

Congress of the United States
House of Representatives
Washington, DC 20515-4312

January 10, 2024

Dear Colleague,

Under the leadership of President Biden and Department of Homeland Security (DHS) Secretary Alejandro Mayorkas, America has experienced the worst border crisis in DHS history. I have long argued the House must impeach Mayorkas, and today, the case has never been stronger.

On October 25, 2021, I first laid out the case for impeaching Mayorkas in a 13-page memo to my Texas Republican colleagues.¹ On March 16, 2022, I sent an updated memo to our House colleagues once again laying out the case.² In both memos I argued Mayorkas had 1) failed to faithfully execute the laws of the United States, 2) violated his oath to defend the Constitution and faithfully discharge the mandated duties of his office, and 3) willfully, actively, and unnecessarily put Americans in danger.

Today, each of those impeachable offenses holds true – below you will see updates on key data points included in the March 2022 and October 2021 memos bearing out that the border crisis for which Mayorkas is responsible is demonstrably worse since the sending of those two memos.

Further, since the sending of those two memos, there is a notable addition to the case for impeaching Mayorkas – he lied to me under oath, a clearly impeachable offense even in the eyes of those “skeptical” of moving forward with impeachment proceedings.

Lied Under Oath

A series of committee hearings since my last update on the case for impeaching Mayorkas demonstrate he has clearly lied under oath regarding DHS maintaining “operational control” of the southern border. It goes without saying that lying under oath is an impeachable offense. Indeed, the House brought articles of impeachment against President Bill Clinton in 1998 – in part – for lying under oath.

In an April 19, 2022, hearing in the House Judiciary Committee, I read word-for-word the statutory definition of “operational control” under the Secure Fence Act of 2006,³ and then asked Mayorkas, “*Do you stand by your testimony that we have operational control in light of this definition?*”

- Mayorkas replied, “*I do, and Congressman, I think the Secretary of Homeland Security would have said the same thing in 2020 and 2019.*”

However, in a March 15, 2023, House Homeland Security Committee hearing, Mayorkas’ own Border Patrol Chief at the time, Raul Ortiz, testified to Chairman Mark Green that DHS *did not* have operational control of the border, wholly contradicting Mayorkas’ statement to me in April 2022:

- Chairman Mark Green: Referring to the definition of “operational control” under the Secure Fence Act of 2006, “*You heard the secretary, he said we have operational control, that’s the definition of operational control.*”
- Border Patrol Chief Raul Ortiz: “*Based upon the definition you have up there, no.*”

¹ <https://www.scribd.com/document/535564622/Roy-Memo-on-Mayorkas-Impeachment>.

² <https://roy.house.gov/sites/evo-subsites/roy.house.gov/files/evo-media-document/FINAL%20Roy%20Case%20for%20Impeaching%20Mayorkas%203.16.22.pdf>

³ Secure Fence Act of 2006 definition: “OPERATIONAL CONTROL DEFINED. — In this section, the term ‘operational control’ means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.”

- Chairman Green: “*We don’t have operational control?*”
- Chief Ortiz: “*No, sir.*”

More importantly, in a Senate Judiciary Committee hearing on March 28, 2023, just days after Chief Ortiz’s testimony, Mayorkas himself effectively admitted he lied to me in April 2022.

- In response to a question by Ranking Member Lindsey Graham on whether we have operational control of the border, Mayorkas said, “*With respect to the definition of operational control, I do not use the definition that appears in the Secure Fence Act. And the Secure Fence Act provides statutorily that operational control is defined as preventing all unlawful entries into the United States. By that definition, no administration has ever had operational control.*”

This not only demonstrates that Mayorkas knowingly lied to me in April 2022 when he confidently asserted that he maintained operational control of the border as defined by the Secure Fence Act of 2006 at the time, but that past administrations would have claimed they also maintained operational control per that definition.

On July 26, 2023, in a House Judiciary Committee hearing, I questioned Mayorkas about his contradictory statements on the topic of operational control dating back to the April 2022 hearing.

- After laying out the timeline of the statements above, I asked, “*You looked straight at the American people, straight at me, straight at every person on this committee and said, ‘We have operational control.’ Why?*”
- Mayorkas responded, “*Congressman, two points: one, you did not let me complete my answer... Two, the Secure Fence Act defines operational control as not a single individual crosses the border.*”
- To which I responded, “*I’m aware I read it and I read it to you, and you read it. And, in fact, you said, ‘I do.’ You didn’t hesitate. You didn’t say ‘I do. I need, I need to explain what I mean by I do.’ You said, ‘I do’ over and over again.*”

Mayorkas lied to me under oath when he claimed he maintained operational control of the border in April 2022 – an absurd assertion at the time by any objective measure. As mentioned above, there is a clear precedent for impeachment for lying under oath. But Mayorkas’ impeachable conduct does not stop there.

Failure to Faithfully Execute the Laws of the United States & Violated His Oath

As I’ve highlighted in previous memos making the case for impeachment, Mayorkas – who serves at the pleasure of the President – has utterly failed to uphold the constitutional requirement that the President “take care that the laws be faithfully executed.”⁴ Further, he has completely disregarded his oath to “support and defend the Constitution of the United States against all enemies, foreign and domestic.” Instead, he has willfully ignored and flaunted the law and Constitution, inviting the most devastating border crisis in our nation’s history, which has only gotten worse under Mayorkas’s tenure.

From halting the vast majority of border wall construction to failing to fully utilize Title 42 prior to its termination, to scrapping the Migrant Protection Protocols, to abusing parole and asylum to release millions into the country against their intent, Mayorkas has failed to faithfully execute the laws on the books and has willfully undermined his oath by failing to protect the United States and her people. Mayorkas’ policies have allowed illegal migrants to cross our border and be released into the United States with an exceptionally low likelihood of removal, encouraging thousands more to come.

At the time of the March 2022 memo, there were 2.5 million illegal migrant encounters since Mayorkas’s confirmation on February 2, 2021.⁵ Through November 2023, more than 6.8 million illegal aliens have been encountered at the southern border since Mayorkas assumed office – 4 million additional encounters in just under 2 years, a 172% increase.⁶

Fiscal Year (FY) 2023 concluded with over 2.5 million illegal migrant encounters, the most illegal crossings recorded in our nation’s history, surpassing the previous record of FY 2022’s 2.4 million.⁷ December 2023 saw an average of 10,000 migrant

⁴ <https://constitution.congress.gov/browse/article-2/#:~:text=The%20President%20shall%20be%20Commander,any%20Subject%20relating%20to%20the.>

⁵ <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁶ Ibid. <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁷ <https://homeland.house.gov/2023/10/26/factsheet-final-fy23-numbers-show-worst-year-at-americas-borders-ever/>.

crossings each day and initial estimates indicate there were over 302,000 encounters, breaking the previous record set in September 2023.^{8,9}

Worse still, these migrants are being released into the U.S. by the hundreds of thousands via this administration's abuse of asylum and parole and its refusal to follow current law mandating detention of all inadmissible aliens.^{10,11,12} More than 2.3 million illegal aliens have been released into the interior of the U.S. under Mayorkas' watch.¹³ Mayorkas himself recently said over 85% of migrants encountered at the southern border are released into the country.¹⁴ The number of migrants released into the interior has gotten so high that some migrants are receiving court dates as far out as 2035.¹⁵

And this doesn't even count the number of migrants who have successfully evaded capture by border authorities altogether. The number of *known* "gotaways" has skyrocketed from 400,000 in FY 2021 to 1.7 million since Mayorkas took office – based on the most recent data – a 325% increase.¹⁶ Reports indicate FY 2023 alone saw more than 670,000 gotaways.¹⁷

This crisis has gotten so bad that this administration can't even keep track of large swaths of encountered and released migrants – a September 6, 2023, report from the DHS Office of Inspector General found between March 2021 and August 2022, at least 177,000, or 18%, of the 981,671 migrants released into the country could not be located, as these individuals provided invalid or illegitimate addresses to border authorities.¹⁸ In addition, the administration's reckless immigration policies led to it losing track of more than 85,000 migrant children across the U.S., putting many of these minors in dangerous situations.¹⁹

The record numbers stemming from Mayorkas' policies have overwhelmed U.S. Customs and Border Protection (CBP), forcing them to spend more time processing migrants and less time patrolling the border to apprehend criminals and stop contraband from entering the U.S.²⁰ In fact, Mayorkas' decision to pull Border Patrol agents and other federal government employees from other parts of the country to assist with screening migrants has only enabled the border crisis by ushering more people into the country.^{21,22} For example, the port of entry in Lukeville, Arizona shut down due to its assigned CBP officers being redeployed from operating the port to assisting with migrant processing, as the flow of illegal migrants has outnumbered line agents.²³

Understandably, this crisis has left CBP agents demoralized and feeling abandoned and attacked by their own superiors. We now know since my last memo that Mayorkas lied when he falsely accused his own CBP agents of "whipping" Haitian migrants. Actions like these combined with the border crisis are contributing to the demoralization imposing a drastic toll on agents and their families – in 2022, 17 border agents committed suicide, a 13-year high.²⁴

By refusing to uphold the law and implementing disastrous policies, Mayorkas has surrendered control of the southern border to Mexican drug cartels, smugglers, and traffickers. Millions of migrants from all over the world have been emboldened to come – many times in massive caravans – to the U.S., knowing full well that all they need to do is show up in order to be released into the interior. While the sheer numbers alone demonstrate Mayorkas' utter failure to uphold his oath to defend "the United States against all enemies, foreign and domestic", the impact of this massive illegal migration crisis on the safety and security of the American people makes the case for impeachment stronger and all the more urgent.

Secretary Mayorkas has Willfully, Actively, and Unnecessarily put Americans in Danger

Mayorkas' abdication of his oath isn't limited to breaking the law; it has extended to endangering the lives of the Americans we represent.

⁸ <https://www.foxnews.com/politics/border-patrol-stops-illegal-immigrant-convicted-murder-marking-10th-killer-arrested-since-october>.

⁹ <https://www.cbsnews.com/news/migrant-crossings-u-s-southern-border-record-monthly-high-december/#:~:text=The%20current%20spike%20in%20migration,10%2C000%20migrants%20in%2024%20hours>.

¹⁰ <https://www.law.cornell.edu/cfr/text/8/235.3>.

¹¹ <https://www.heritage.org/immigration/commentary/the-case-impeaching-homeland-security-secretary-alejandro-mayorkas>.

¹² <https://americafirstpolicy.com/issues/issue-brief-dhss-unlawful-use-of-parole-is-a-profit-driver-for-cartels-and-human-traffickers>.

¹³ <https://www.washingtonpost.com/immigration/2024/01/06/biden-migrants-us-mexico-border/>.

¹⁴ <https://www.foxnews.com/politics/mayorkas-tells-border-patrol-agents-illegal-immigrants-released-into-us-sources>.

¹⁵ <https://nypost.com/2023/05/11/migrants-admitted-to-us-given-2035-immigration-court-dates/>.

¹⁶ <https://nypost.com/2023/10/31/news/alejandro-mayorkas-admits-600000-illegal-gotaways-in-2023/>.

¹⁷ <https://twitter.com/AdamShawNY/status/1733635960980578304>

¹⁸ <https://www.oig.dhs.gov/sites/default/files/assets/2023-09/OIG-23-47-Sep23-Redacted.pdf>.

¹⁹ <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

²⁰ <https://homeland.house.gov/2023/12/20/new-border-patrol-agents-stuck-processing-illegal-aliens-instead-of-performing-border-security-mission/>.

²¹ <https://www.govexec.com/workforce/2022/11/dhs-deploying-more-employees-border-and-some-are-growing-tired-it/379902/>.

²² <https://www.foxnews.com/politics/border-patrol-deploying-hundred-agents-northern-border-coast-southern-border>.

²³ <https://apnews.com/article/arizona-border-crossing-closes-lukeville-772d0ec3688a3214ebdedb14015edcda>.

²⁴ https://www.thecentersquare.com/national/article_7c41f1ba-c428-11ed-b7dd-434d37b140a1.html.

There is perhaps no clearer example of this than the fentanyl crisis devastating our communities. In 2022, fentanyl poisonings killed more than 75,000 Americans – at least 200 deaths a day – and the vast majority of this illicit fentanyl is made by Mexican drug cartels using Chinese chemicals and then brought across the southern border.^{25,26} The amount of fentanyl seized at the southern border has skyrocketed from over 11,200 pounds in FY 2021 – which at the time was more fentanyl seized than the preceding three fiscal years combined – to over 26,700 pounds in FY 2023 (a 138% increase), enough to kill every American 18 times over.^{27,28}

But the endangerment of U.S. citizens isn't limited to the smuggling of poisonous substances. Nefarious actors of all backgrounds have capitalized on border officials spending large portions of their time processing migrants instead of policing the border, resulting in fewer line agents detaining criminals. In FY 2021, Border Patrol apprehended more than 10,700 illegal migrants with criminal convictions, including but not limited to homicide, drug trafficking, weapons smuggling, sex crimes, and driving under the influence violations. By FY 2023, there were 15,200 criminal apprehensions – an increase of more than 42%.²⁹ Similarly, gang member apprehensions have swelled during the same period.³⁰

Mayorkas' actions have also invited individuals with ties to terrorist organizations to infiltrate our nation through our porous border. In FY 2023, 169 known or suspected terrorists (KSTs) were caught at the southern border, an unfathomable 1,026% increase from FY 2021's 15 KST apprehensions.³¹ These apprehensions should draw concern from every member of Congress considering rising terrorist threats throughout the globe. After Hamas carried out its barbaric terroristic attack against our friend and ally Israel in October 2023, CBP issued a memo warning of Hamas, Palestinian Islamic Jihad, and Hezbollah members potentially crossing the southern border.^{32,33}

Some may argue the large number of narcotics seizures and criminal arrests are signs that law enforcement is intercepting most contraband and bad actors that come across the border. However, with 1.7 million known gotaways, indiscriminate releases, border agents being pulled from the line, and the fact that many narcotics enter without detection, we know the reported numbers only scratch the surface.^{34,35} For example, in July 2022, a 17-year-old illegal migrant, who later turned out to be an MS-13 gang member, was released from the southern border and was later charged with murdering and sexually assaulting 20-year-old Kayla Hamilton in her home in Maryland.³⁶ Unfortunately, stories like these are all too common.

Moreover, border states like Texas bear the brunt of the open border as migrants, criminals, and drugs enter our communities.^{37,38} Localities have been under strain, with endless waves of migrants absorbing their resources. As a result, released aliens from the border have taken the lives of law-abiding citizens, and the prevalence of fentanyl has grown across American neighborhoods.³⁹ The federal government's refusal to do its job has forced states like Texas to take security efforts into their own hands. Since early 2021, Texas has allocated about \$12 billion to border security efforts and has been forced to marshal its law enforcement, National Guard, and other resources to stem the tide of illegal immigration and other lawless activity pouring into its communities.⁴⁰

And while Democrats and the administration decry Republican efforts to secure the border as “inhumane” or “lacking compassion,” they disregard that they have emboldened migrants to take a deadly journey to the U.S. In FY 2022, at least 853 migrants died attempting to cross the U.S.-Mexico border, surpassing the 650 migrant deaths in 2021 when the October 2021 memo first reported migrant casualties.⁴¹ Lest we forget, in June 2022, mere months after I laid out my most recent case for impeaching Mayorkas, 53 migrants, including eight children, were cooked alive in an abandoned tractor-trailer

²⁵ <https://www.cnn.com/2023/05/18/health/drug-overdose-deaths-2022/index.html>.

²⁶ https://www.dea.gov/sites/default/files/2020-03/DEA_GOV_DIR-008-20%20Fentanyl%20Flow%20in%20the%20United%20States_0.pdf.

²⁷ *Ibid.* <https://roy.house.gov/sites/evo-subsites/roy.house.gov/files/evo-media-document/FINAL%20Roy%20Case%20for%20Impeaching%20Mayorkas%203.16.22.pdf>.

²⁸ <https://www.washingtonexaminer.com/restoring-america/fairness-justice/enough-fentanyl-stopped-at-border-in-past-year-to-kill-every-american-18-times>.

²⁹ <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics>.

³⁰ *Ibid.* <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics>.

³¹ *Ibid.* <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics>.

³² <https://dailycaller.com/2023/10/22/hamas-hezbollah-southern-border/>.

³³ <https://www.state.gov/foreign-terrorist-organizations/>.

³⁴ <https://x.com/RepMarkGreen/status/1725585610306371689?s=20>.

³⁵ <https://www.theblaze.com/column/opinion/horowitz-dhs-releases-illegal-aliens>.

³⁶ <https://www.washingtonexaminer.com/restoring-america/fairness-justice/mother-demands-border-fix-daughter-ms-13-murder>.

³⁷ <https://gov.texas.gov/news/post/operation-lone-star-cracks-down-on-illegal-border-crossings>.

³⁸ <https://www.keranews.org/texas-news/2023-08-31/billions-more-for-border-security-highlight-texas-focus-on-drug-interdiction-immigration>.

³⁹ <https://www.breitbart.com/politics/2023/08/28/illegal-alien-freed-southern-border-charged-killing-11-year-old-aiden-clark/>.

⁴⁰ <https://www.keranews.org/texas-news/2023-08-31/billions-more-for-border-security-highlight-texas-focus-on-drug-interdiction-immigration>.

⁴¹ *Ibid.* <https://roy.house.gov/sites/evo-subsites/roy.house.gov/files/evo-media-document/FINAL%20Roy%20Case%20for%20Impeaching%20Mayorkas%203.16.22.pdf>.

outside of San Antonio.⁴² Not to mention the thousands of migrants – many of whom are children – who are sexually abused and exploited on the journey, and often sold into the sex trafficking trade.

Mayorkas has also gutted interior enforcement, placing needless restraints on U.S. Immigration and Customs Enforcement (ICE) agents to arrest, deport, and remove illegal aliens, including criminals, across the country.⁴³ He dutifully carried out President Biden’s directive of placing a 100-day moratorium on deportations and removals, including those convicted of egregious crimes.⁴⁴ On September 30, 2021, Mayorkas issued a memo directing ICE to narrow its focus of migrants who have criminal backgrounds for removal, meaning large categories of criminal aliens are not being arrested or removed under this directive.⁴⁵ On, April 3, 2022, DHS notified ICE prosecutors of new guidelines for litigating removal cases against aliens, even those with safety and security concerns, such as taking into account the alien’s “ties to the community” and other arbitrary factors.⁴⁶

The result has been ICE expelling fewer criminal aliens from the country. In FY 2020, during COVID, ICE removed 118,949 aliens with criminal convictions or pending criminal charges.⁴⁷ ICE only removed 44,096 aliens with criminal convictions or pending criminal charges in FY 2022 – a 62% decrease from FY 2020.⁴⁸ In FY 2023, agents removed only 69,902 criminal migrants from the country.⁴⁹ In addition to limiting removals, thousands of criminal aliens with criminal convictions or pending charges have been released from ICE detention into American communities under Mayorkas’ command.^{50,51} This flagrant disregard for public safety will endanger law-abiding Americans by allowing deportable criminals back into the streets where they could commit new crimes.

In sum, Mayorkas’ policies have enabled fentanyl and other deadly drugs to pour into our communities, criminal migrants to be released into the country with a low likelihood of removal, a massive influx of suspected terrorists in the wake of Hamas’ terrorist attack on Israel, an unprecedented strain on state and local governments, record deaths of migrants seeking to come here, and the endangerment of Americans. By any measure of the notion, this conduct is impeachable and a clear violation of his oath of office.

Conclusion: The Case for Impeachment Has Never Been Stronger

The proof of Mayorkas’ misconduct was evident in October 2021 and March 2022. As we approach Mayorkas’ third year as DHS secretary, he has intentionally worsened the border crisis he created. The evidence for his impeachment is demonstrably clear and has only grown since last year, including Mayorkas lying under oath.

I am encouraged by the Homeland Security Committee, under the leadership of Chairman Mark Green, taking steps to move forward with the impeachment of Mayorkas – it is imperative we do so immediately. We also must reject notions of whether his conduct merits impeachment or if Congress has the power to remove a cabinet secretary. The Constitution addresses these concerns.⁵²

The time has long passed. America cannot wait. We must impeach Secretary Mayorkas immediately.

Sincerely,



Chip Roy
Member of Congress

⁴² <https://apnews.com/article/immigrants-killed-heat-tractor-trailer-smuggling-texas-166d59e8fc8b380742ac90146eac2545>.

⁴³ <https://cis.org/Arthur/Chilling-Implication-Bidens-Enforcement-Policies>.

⁴⁴ https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf#page=3.

⁴⁵ <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

⁴⁶ https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf.

⁴⁷ <https://www.ice.gov/doclib/news/library/reports/annual-report/iceReportFY2020.pdf>.

⁴⁸ <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf>.

⁴⁹ <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2023.pdf>.

⁵⁰ <https://www.breitbart.com/politics/2023/05/25/bidens-dhs-frees-2-3k-illegal-alien-convicted-criminals-into-u-s-in-five-months/>.

⁵¹ <https://www.breitbart.com/politics/2023/01/30/biden-begins-new-year-freing-550-illegal-alien-criminals-u-s/>.

⁵² <https://lawliberty.org/the-original-meaning-of-high-crimes-and-misdemeanors-part-2/>.